



## State of Utah

GARY R. HERBERT

Governor

GREG BELL

Lieutenant Governor

NEAL T. GOOCH

Appointed Ins. Commissioner

# Insurance Department

## State of Utah Title and Escrow Commission Meeting Meeting Information

**Date:** February 8, 2010

**Time:** 9am

**Place:** East Bldg, Spruce Room

### MEMBERS

(Attendees = x)

#### Commission Members

xChair, Jerry M. Houghton, Tooele Cnty

xCanyon W. Anderson, Davis Cnty

xCortlund G. Ashton, Salt Lake Cnty

xGarry M. Goodsell, Iron Cnty

xDirk Keyes

#### Department Staff

xPerri Babalis

xSuzette Green-Wright

xMark Kleinfeld

AG Legal Counsel

Mc Director Dir.

Admin. Law Judge

xTammy Greening

xSheila Curtis

xJilene Whitby

xBrad Tibbitts

Mc Examiner

Mc Examiner

Pio/Recorder

Life, P&C

#### Public

Todd Hallock

Jack Marinello

Pete Stevens

Lincoln Scoffield

Clayton Hansen

Darrell Catmull

Chris Jones

David Moore

### MINUTES

#### General Session: (Open to the Public)

- **Welcome and Introductions** / Jerry Houghton

Jerry began the meeting at 9:05am. Cort made the **motion** to move into Executive Session in order to discuss the Matrix, Canyon seconded it and the vote was unanimous.

- **Executive Session**

- **Adopt Minutes of Previous Meeting**

- Cort asked for the second sentence in the second bullet of the "Good Funds" discussion on the second page be clarified to show that he was in favor of the ability to disperse more than \$10,000 but was concerned with Good Funds under \$10,000.
- Jerry asked if Ecase 2564 and 2566 were completed. Sheila said they were and would show up on next month's spreadsheet.
- Cort **moved** to approve the minutes with the noted change, Canyon seconded it and the vote was unanimous.

- **Reports**

- **Concur with Licensee Report**

Cort said he had renewed early and wanted to know when it would show-up on the report? He was told on his renewal date. Canyon **moved** to concur with the report, Garry seconded it and the vote was unanimous.

- **Number of Cases Open & Closed**

- In regards to Open Consumer Complaints Jerry said that in Tooele they were having a hard time finding contact information for homeowner associations. Canyon said he was having the same problem.
- Cort pointed out that in 2009 the department received three consumer complaints, which was down from 15 the previous year.

- **Enforcement Cases**  
Reviewed by the Commission.
- **Request for Attorney Exemption: Todd N. Hallock**  
All were given a copy of Mr. Hallock's letter and resume. Jerry asked and received a brief summary of his resume from Mr. Hallock. He said he received a title and escrow license the end of 2006. It was then terminated the end of February 2008 since it was not being used. Recently they hired an agent with 20 years of title and escrow experience. Canyon made the **motion** to approve the exemption, Cort seconded it and the vote was unanimous.
- **Administrative Proceedings Action**
  - **Request for Hearing: None**
  - **Stipulation and Orders: US Title Insurance Agency, LLC**  
Mark said the recommended forfeiture was \$2,500 for failing to issue a title policy. Correct the date on page 3 to September 23, 2008. **Suzette was asked to add this violation to the Matrix.** Garry made a **motion** to approve the Stip, Canyon seconded it and the vote was unanimous.
  - **Emergency Suspension: Marianna Blake of Meridian Title**  
The Fraud Division has filed criminal charges against Ms. Blake. Seven second degree felony charges are being prepared against her. February 22 is the date of the first hearing. The department has started the revocation process on her license. Blake confessed in an email to her employer that she had been stealing funds for the past ten years. So far auditors have estimated the loss at around \$700,000. Currently the department is deciding what action, if any, needs to be taken against Meridian Title. All but one person has been made whole. Blake's assets have been seized by the Fraud Division. The Ecase number is 2605 on the enforcement report.
- **Old Business**
  - **Good Funds Legislation**  
This is to be left on the agenda as an action item. **Canyon will give proposed language to Cort** and bring it to the next meeting for discussion. It will be in-line with the Indiana wording. Garry expressed concern with the wording regarding the \$10,000 limit.
  - **R592-6(4)(21) Enforceable Examples / Suzette**
    - Canyon expressed concern with those who are not concerned about agents loaning to clients. This is a point of unfair inducement. Garry expressed concern with making loans to get business.
    - Pete suggested redefining what "controlled business" is and give it teeth. Nothing is being done about builders loaning to title agents. He disagreed with carve-outs that leave the department making interpretations. Jerry said that the controlled business report states what constitutes controlled business. However, when one fills out the report it asks for a total amount and what percentage of ownership the person has. The report asks for one thing and the code another. The Controlled Business Report should list owners but what about employees who own stock? How does the report trigger an investigation?
    - Canyon said there should be a carve-out on primary or secondary residences. Another carve-out should be on foreclosures. Another issue is in the tax code and investment properties. The rule needs to recognize investment lending. He has a paragraph that outlines the carve-outs.
    - "Immediate family" has already been defined and a definition of "second degree" can probably be found in Blacks Law.

- Jack said the question was: "What is the reason for the loan?" If it is conditioned on title work then we have unfair inducement. Garry said he does a number of loans that are not conditioned.
  - Who regulates hard money loans? No one. A loan could be made on a piece of property but your agents could not close the loan and retain fiduciary objectivity.
  - Jack said he was not representing First American Title.
  - Garry said that if he could make a loan on property that is at or above market rates there would be no violation. Canyon referred to 31A-23a-503, the Controlled Business statute. It states that if an insurer or producer receives more than a third of their businesses revenues from controlled business they are in violation of the code. Any referred business with anyone with a financial interest is in violation of controlled business. Cort said any rate could be an inducement.
  - Pete doubted a bill could make it through the legislature that would prevent an agent's spouse from loaning money. He thought the real problem was how to apply the controlled business law. One can't assume that anytime a loan is made there is a controlled business violation. There must be proof. Canyon thought it was too difficult to get the evidence. The department said they had difficulty investigating cases where they had to define the relationship of the lender? The fact that they are a relative is not enough to go on. The terms "associate," as used in 31A-23a-503, and "affiliate," as used in R592-6, were discussed?
  - Suzette offered to prepare changes that will help with enforcement. She will bring it to the next meeting.
- **New Business**
  - **Breach of Fiduciary Duty - Short-Sale Transactions** / Suzette/Tammy
    - The department is receiving a lot of complaints about title agents offering to collect information for a short sale which is then being submitted to the lender. The buyer's lender is trying to determine if the transaction is a flip.
    - Darrell Catmull spoke to this issue. He does short sales. New buyer lending underwriters want to see seller documents, including the Demand Letter. He did not think Demand Letters should be given out at all as this is a breach of privacy. Jerry wondered about asking the Real Estate Commission to tell their licensees that they should not be given anything that is not a public record. Darrell wanted the Title Commission to give escrow agents the authority to say "No." Garry said the problem was with lending underwriting guidelines, which the Commission has no authority over. Darrell wants to maintain privacy between parties. Tammy made the point that a title agency should not be attempting to relay information by and between the short sale lender and the real estate agent as this is outside the title agency's scope of duty. The title agency's involvement, other than an initial PR given to the listing agent, should only begin upon the acceptance of a signed REPC.
    - An attendee asked how "negotiation" was defined and how this issue would be enforced. Cort said that if a person is doing subordination processing or short sale processing they may be doing something of value and if they are not charging for this service it would be an unfair inducement. If you collect the documents you have to be able to negotiate. You can't tell when collecting and negotiating begins and ends. If someone is trying to protect the referral fee it is an unfair inducement. This is already a violation against the requirement to charge for service.
    - Put it on the next agenda under Old Business.
  - **Auditing of Financial Statements** / Cort
 

Cort noted that there had been a number of trust account frauds in the past 60 days. He noted that the U.S. Attorney's office gets interns from business schools to do work

for them and suggested that the department might be able to do the same. Suzette said there would be a cost for a phone and computer. Audited financials were suggested as an alternative. It was noted that the fraud case in St. George would not have been discovered by an audit. **Keep this on the agenda under Old Business.**

- **Commission Member Disclosure** / Perri  
**New Commission members were given a disclosure form, as per 31A-4-302, to complete and return.**
- **Other Business from Committee Members**
- **Adjourn:** Jerry made the **motion** to adjourn and Canyon seconded it.
- **Next Meeting:** March 8, 2010

**2010 Meetings**  
**Spruces Room, East Building**

May 10	June 14	March 8	April 12
September 13	October 11	July 12	August 9
		November 8	December 13